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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 MICHAEL THATCHER AND
16 JEANETTE THATCHER, on behalf of
17 themselves and all others similarly
18 situated,

19 Plaintiffs,

20 vs.

21 COUNTY OF SANTA CLARA, AND
22 DOES 1-10, et al.,

23 Defendants
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CASE NO:

CLASS ACTION COMPLAINT

42 U.S.C. §1983;
VIOLATIONS OF SHERMAN
ANTITRUST ACT (15 U.S.C. §
1, et seq.)

JURY TRIAL DEMANDED

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I. INTRODUCTION

1. Thousands of Santa Clara County jail inmates and their families, most of whom are not convicted but facing charges, are held hostage to grossly unfair and excessive phone charges, forcing them to pay these charges in order to maintain contact with their loved ones who are incarcerated. These charges are nothing but money making schemes by Santa Clara County and its jail to force family members desperately trying to maintain contact with their inmate husbands, parents and children to pay for totally unrelated jail expenses or give up their primary lifeline of communication. Santa Clara County runs one of the largest jails in the US, and essentially extorts monies from mostly poor and minority families trying to get by and stay in contact with loved ones. It does so by establishing extortionate and outrageous “commissions” to be paid by this vulnerable population to fund the jails.

2. The Federal Communications Commission (“FCC”) has recently taken decisive action. After many years of deliberation, on October 2, 2015, it reached the decision that it would set standards for ICS rates in order “to rein in the excessive rates and egregious fees on phone calls paid by some of society’s most vulnerable: people trying to stay in touch with loved ones serving time in jail or prison.” FCC Press Release. <https://www.fcc.gov/document/fcc-takes-next-big-steps-reducing-inmate-calling-rates>. The FCC observed that “contact between inmates and their loved ones has been shown to reduce the rate of recidivism,” but “high inmate calling rates have made that contact unaffordable for many families, who often live in poverty.” Reducing the cost of calls “measurably increases the amount of contact between inmates and their loved ones, making an important contribution to the criminal justice reforms sweeping the nation.” As Federal Communications Commissioner Mignon Clyburn has said, this system “is inequitable, it has preyed on our most vulnerable for too long, families are being

1 further torn apart, and the cycle of poverty is being perpetuated.” She further added
2 that the prison phone industry was “the most egregious case of market failure” she
3 has seen in her career. This lawsuit seeks to put an end to this unconscionable
4 practice by Santa Clara County.

5 3. On November 5, 2015, the FCC released a “Second Report and Order
6 and Third Further Notice of Proposed Rulemaking” (FCC-136) which establishes
7 rate caps on interstate and intrastate calling rates and either eliminates and restricts
8 the fees inmate telephone providers could charge.

9 4. This action against the County of Santa Clara, along with soon to be
10 filed lawsuits against San Mateo County, Contra Costa County, Alameda County
11 and previously filed lawsuits against Los Angeles County, Orange County,
12 Ventura County, Riverside County and San Bernardino County, specifically
13 concerns the role of local California counties and jails, which collect
14 unconscionable “commissions” as payment for granting the exclusive telephone
15 link through which inmates in their various jails can communicate with the outside
16 world, including family, friends, bailbondsmen, legal counsel and others (hereafter
17 collectively “Call Recipients”). That these counties fully understand the injustice
18 they are inflicting, even while they continue it, is captured by the statement of
19 former Los Angeles County Supervisor, Zev Zaroslavsky, “Everyone’s making a
20 lot of money at the expense of inmates’ families. They’re in jail. They’re paying
21 their debt to society. *That doesn’t give us the right to fleece them.*” (emphasis
22 added).¹

23 5. The phone systems are commonly referred to as an Inmate Calling
24 System (“ICS”), which is the term used by the FCC when addressing them.

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26
27 ¹ See David Lazarus, *Gouging L.A. County Inmates With High Phone Fees*, The
28 Los Angeles Times, September 8, 2014.

1 Counties like the County of Santa Clara enter into exclusive contracts granting to
2 telecommunications companies, the most common of which are Global Tel*Link
3 Corporation (“GTL”) and Securus Technologies, Inc. (“Securus”) (hereafter
4 collectively the “telecommunications companies”), the exclusive right to establish
5 a phone system through which inmates – both pretrial and convicted – may
6 communicate with Call Recipients, who have to establish a pre-paid account with
7 the telecommunications companies and are charged unreasonable, unjust and
8 exorbitant rates, the lion’s share of which are in turn paid to the Santa Clara
9 County as what are euphemistically referred to as “commissions.” Said
10 telecommunications companies are common carriers within the meaning of the
11 Federal Communications Act. Under this scheme, the County of Santa Clara and
12 its jails receive a **guaranteed \$1.7 million dollars annually**, which comprises the
13 majority of the collected charges.

14 6. Notably, the State of California provides a stark contrast to the
15 practices of the County of Santa Clara. California’s practice establishes that there
16 is no meaningful basis to contend that exorbitant phone rates and commissions are
17 necessary to cover the costs of the service. In August 2007, California began to
18 phase out commissions at its state prisons, ultimately eliminating them in 2010.
19 Prior to August 2007, calls from California's prisons were \$1.50 + \$.15/minute for
20 local calls, \$2.00 + \$.22/minute intrastate and \$3.95 + \$.89/minute interstate.
21 Now, with no commissions, current per minute rates for intrastate and local calls
22 are \$0.135 and \$0.09, respectively, and the cost of an intrastate 15 minute call is
23 \$2.03. Thus, the same 15-minute intrastate call without the commissions is
24 61.70% less than when the State received commissions (\$3.27 differential in the
25 post commission fee divided by \$5.30 total fee when commissions were used).

26 7. These payments, euphemistically called “commissions,” are an
27 integral part of a scheme by virtue of which the County of Santa Clara and the
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1 telecommunications companies conspire and share in charging Call Recipients
2 unjust, unreasonable and exorbitant rates to communicate with inmates, as well as
3 fees that are illegal under California law. The rates charged to inmates and their
4 families, friends and associates are far greater than those paid for ordinary
5 telephone service.

6 8. These unjust, unreasonable, excessive and unlawful fees work a
7 terrible hardship on inmates, and their family, friends and associates who bear the
8 brunt of the charges. Most inmates of Santa Clara County jails are relatively poor
9 and lack significant financial resources; they are disproportionately people of
10 color, especially African-American and Latino; many suffer from serious mental
11 illness. Their families, friends and associates similarly are relatively poor, people
12 of color and lack significant financial resources. The charges at issue in this
13 complaint unlawfully put the burden on inmates' families, friends and associates of
14 paying for County services and costs that are rightfully the responsibility of the
15 taxpayers and society at large. These practices limit contact between inmates and
16 their families, friends, associates and other Call Recipients due to their exorbitant
17 costs, resulting in greater isolation for inmates and reduced support, and
18 undermining the objective of returning inmates to the community with greater and
19 stronger ties. Many people are forced to limit their contact with inmates far more
20 than they would wish because of the cost.

21 9. Although the Complaint identifies Defendant County of Santa Clara,
22 the Sheriff's Department of Santa Clara County is a part of that County and, as the
23 term "County" or "County Defendants" is used in this Complaint, it encompasses
24 the Sheriff's Department of Santa Clara County as well as the County at large.

25 10. Plaintiffs seek damages and injunctive relief, including refunds of the
26 unlawful sums they paid described in this Complaint.

1 11. Defendant Santa Clara County's wrongful conduct involves relatively
2 small amounts of damages for each class member. Defendants are carrying out a
3 scheme to deliberately collect unlawful but small sums of money from large
4 numbers of Call Recipient Class Members and Inmate Class Members. Call
5 Recipient Class Members are individuals who accept calls from the incarcerated
6 inmate, and set up an account with the third party phone providers. Inmate Class
7 Members are the incarcerated individuals who use the telephone to contact the Call
8 Recipient Class Members. The Defendants conduct unlawfully burdens Class
9 Members' ability to communicate with loved ones, friends, associates or persons
10 important to their or their loved ones' legal situation. Each class brings this action
11 on their own behalf and on behalf of all others similarly situated.

12 12. The gravamen of this Complaint concerns the County of Santa Clara's
13 liability for 1) violation of 42 U.S.C. §1983 (for depriving inmates and their
14 families and associates their First Amendment rights of association, and
15 unconstitutionally conditioning their use of the phones on such outrageous charges
16 in violation of the Fifth Amendment's due process and unlawful takings
17 provisions, and 2) a violation of the Sherman Antitrust Act, 15 U.S.C. §1, et seq.

18 13. Plaintiffs anticipate that the Complaint will be amended to add
19 additional Named Plaintiff Class Representatives for the County of Santa Clara.

20 **II. JURISDICTION AND VENUE**

21 14. Plaintiffs present federal claims for relief under 42 U.S.C. §1983 and
22 15 U.S.C. § 1, et seq. Accordingly, federal jurisdiction is conferred upon this
23 Court by 28 U.S.C. §§1331 and 1343.

24 15. Plaintiffs' claims arise out of acts of the Defendants in Santa Clara
25 County, located within the Northern District of California. Accordingly, venue is
26 proper within the Northern District of California.

16. All Plaintiffs – whether inmates for whom a third party ICS account was in the past or present established, or will in the future be established, and Call Recipients who establish the ICS account (defined more fully in ¶1, *supra*) – have standing because both inmates and Call Recipients suffered an injury in fact. Inmates, even if they did not pay or contribute to payment for the ICS, were and will be injured because the unlawful conduct alleged herein restricted their practical ability to communicate with the outside world. Call Recipients were injured both because the unlawful conduct alleged herein restricted their practical ability to communicate with inmates and because they paid for unlawful fees and charges.

11 **III. PARTIES**

12 **A. PLAINTIFFS**

17. Plaintiffs Michael Thatcher and Jeanette Thatcher are the parents of Daniel Thatcher, who was a male inmate at the Santa Clara Main Jail in San Jose, California since March 2015. Mr. and Mrs. Thatcher directly bear the cost of the charges for telephone calls made by their son Daniel. Therefore, Plaintiffs Michael Thatcher and Jeanette Thatcher qualify as the payors of said fees.

18. Defendant Santa Clara County (hereafter “County”) is a public entity organized and existing under the laws of the State of California. The Santa Clara County Sheriff’s Department (hereafter “SCCSD”) is a public entity within the meaning of California law, and is an agency of Santa Clara County (Defendants Santa Clara County and the Santa Clara County Sheriff’s Department are hereinafter collectively referred to as “County Defendants”). The County is sued in its own right for a County and/or SCCSD policy, practice or custom which caused Plaintiffs’ injuries in violation of one or more federal rights. ,

19. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants

1 by such fictitious names. Plaintiffs will give notice of this complaint, and of one of
2 more DOES' true names and capacities, when ascertained. Plaintiffs are informed
3 and believe, and based thereon allege that Defendants DOES 1 through 10 are
4 responsible in some manner for the damages and injuries hereinafter complained
5 of. Because there are numerous Defendants, each of which may have Doe
6 Defendants that should appropriately be named in the Complaint, ten Doe
7 Defendants may be inadequate. Plaintiffs reserve the right to seek leave to add Doe
8 Defendants.

9 20. Individual Defendants from Santa Clara County (although not
10 currently named, but who may be named in the future) may at times be referred to
11 herein collectively as the "Individual Defendants." .

12 21. Upon information and belief, Plaintiffs further allege that, at all times
13 relevant herein, the Individual Defendants participated in, implemented,
14 supervised, approved, and/or ratified the unconstitutional or illegal acts undertaken
15 on behalf of the County Defendant with regard to which they are named as
16 Individual Defendants.

17 22. Plaintiffs are informed and believe, and thereupon allege that, at all
18 times relevant herein, the Individual Defendants, and each of them, were the
19 agents, servants and employees of the County Defendant with regard to which they
20 are named as Individual Defendants, and were acting at all times within the scope
21 of their agency and employment with the knowledge and consent of their
22 principals and employers. At all times herein, Defendants, and each of them, were
23 acting under the color of state law.

24 23. When a County Defendant is named on state law claims, it is named
25 not only under a theory of directly liability, but also as an entity responsible in
26 respondeat superior for the actions undertaken by its agents, servants and
27 employees. Said respondeat superior liability extends to and encompasses, but is
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1 not limited to, the ministerial acts of implementing the contracts and ICS charges
2 challenged in this Complaint.

3 24. When the phrase “Santa Clara County Defendants” is used in this
4 Complaint, it refers not only to the County Defendants, but to the Doe Defendants
5 and to any Individual Defendants who may be named with regard to that County.

6 **IV. CLAIMS OF CLASS REPRESENTATIVES**

7 25. Due to the cost of each call, whether through GTL or another
8 telecommunications company, Mr. and Mrs. Thatcher have paid many hundreds of
9 dollars to GTL since their son’s imprisonment. Plaintiffs Michael Thatcher and
10 Jeanette Thatcher bring this suit on behalf of themselves and on behalf of a class of
11 similarly situated persons, defined elsewhere in this Complaint.

12 **V. CLASS ACTION FACTUAL ALLEGATIONS**

13 26. The County of Santa Clara entered into *exclusive* contracts with
14 Global Tel*Link (hereinafter referred to as “GTL”) for a period of several years
15 from on or about December 1, 2010 through the present, to provide pay telephone
16 services from Santa Clara’s County’s jails and other correctional facilities,
17 resulting in a monopoly for GTL who received the contract. Because these
18 contracts were/are exclusive to GTL and because inmates are literally a captive
19 market with no ability to choose another telephone company, there are no
20 competitive market forces to constrain the prices set by GTL.²

21 27. In return for this monopoly power, however, GTL provide kickbacks,
22 masqueraded as “site commissions,” to the County of Santa Clara. Indeed, the
23 County of Santa Clara selected GTL to be the third party phone providers based on
24 the fact that they were the companies that agreed to pay the highest amount in

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27 ² See *In re Rates for Interstate Inmate Calling Servs. I*, 28 FCC Rcd. 14107, 14129 (F.C.C. Sept.
28 26, 2013).

1 annual commissions. In order to generate these sizable kickbacks, “[f]amilies of
2 incarcerated individuals often pay significantly more to receive a single 15-minute
3 call from prison than for the basic monthly phone service.”³ In addition, GTL and
4 Securus impose unnecessary and unconscionable fees and charges on accounts
5 used for inmate telephone calls, all of which “inflicts substantial and clear harm on
6 the general public,”⁴ including Plaintiffs.

7 28. Since County Defendant’s commission contract provides a substantial
8 minimum guaranteed fee against an identified percentage of the ICS charges for
9 the County of Santa Clara after which GTL still make a substantial profit, it is
10 obvious that, without the commissions, the charges would be substantially lower,
11 and they bear no reasonable relationship to the actual cost of providing the ICS
12 service.

13 29. County Defendants use its annual commissions as provided by Penal
14 Code §4025(c-d), which states that any money or commission collected by a jail
15 for the use of pay phones primarily used by incarcerated inmates shall be deposited
16 in the Inmate Welfare Fund and used first for the benefit, education and welfare of
17 inmates and, to the extent not needed for that purpose, may be used for the
18 maintenance of county jail facilities. Nonetheless, rather than using the money
19 primarily for vocational and educational programs, or other programs designed for
20 the rehabilitation of inmates, much, if not most, of the money deposited in the
21 Inmate Welfare fund is spent on general jails issues, including maintenance,
22 equipment, office furniture, salaries and, in some instances, food. The

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25 ³ *Id.*, 28 FCC Rcd. at 14130.

26 ⁴ *In re Rates for Interstate Calling Servs.* II, 40, 15929, 15938 (F.C.C. Nov. 21,
27 2013).
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1 demographics of the jail population of County Defendants' jails are highly
2 disproportionate to the demographics of Santa Clara County as a whole. While
3 Plaintiffs do not currently have statistical breakdown of Santa Clara County, there
4 are readily available statistics available on the demographics of the California
5 prison population which, on information and belief, mirrors that of the County
6 jails. While approximately 29% of the California male prison population is
7 African-American, less than 7% of the California population is African American.
8 In 2013, 4.367 % of all African-American males (4,367 out of every 100,000) in
9 California were imprisoned, compared to .922 % (922 out of every hundred
10 thousand) for Latinos, and .488% (488 out of every hundred thousand) for whites.
11 Said another way, African-Americans are imprisoned at almost 10 times the rate of
12 whites, and Latinos are imprisoned at almost twice the rate of whites.

13 30. The jail population is similarly disproportionately composed of
14 persons with mental illnesses or drug addiction, both of which qualify as
15 disabilities. A 2006 study by the U.S. Department of Justice found that more than
16 half of all prison and jail inmates have a mental health problem compared with 11
17 percent of the general population, yet only one in three prison inmates and one in
18 six jail inmates receive any form of mental health treatment. Other data indicate
19 that approximately 20% of incarcerated inmates have a serious mental illness, and
20 30 to 60 % have substance abuse problems. The percentages increase significantly
21 when including broad-based mental illnesses. For example, 50 percent of males
22 and 75 percent of female inmates in state prisons, and 75 percent of females and 63
23 percent of male inmates in jails, will experience a mental health problem requiring
24 mental health services in any given year.

25 31. There are no security or prison administration issues at stake in the
26 question of whether excessive commissions are paid, and there is no rational
27 connection between those issues and payment of an excessive and unreasonable
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1 commission. A substantial portion of the commissions does not go into the Inmate
2 Welfare Fund at all, and, on information and belief, much of the funds that do go
3 into that Fund do not redound to the benefit of the inmates. The sole impact of the
4 relief sought here would be to reduce the funds received by the County Jail from
5 the commissions. The requested relief has no direct impact on the security or
6 operation of the jail. To the extent the requested relief impacts the jail's access to
7 funds, jail funding is not an issue entitled to any judicial deference, and in any
8 event is not a justification for an otherwise unlawful prison practice.

9 **A. FACTUAL ALLEGATIONS**

10 32. For a period of several years, from on or about December 1, 2010,
11 continuing through the present, the County has had a written agreement with GTL
12 to provide ICS for the SCCSD. Pursuant to that agreement, GTL agreed to pay, and
13 did pay, the County a 61% of GTL revenue generated through ICS, which in 2015
14 amounted to over \$1.7 million dollars. As of August 1, 2015, the terms of the
15 agreement between the County and GTL were amended and GTL will pay to the
16 County a 71% commission on revenue generated through ICS. Plaintiffs are
17 currently unaware of the actual commission amounts that GTL has paid to this
18 County for each year this agreement was in effect.

19 33. In addition, upon information and belief, the County also has an
20 agreement with GTL and/or another third party provider, the details of which are
21 currently unknown to Plaintiffs, but which generally involve the sale of prepaid
22 direct call phone cards directly to inmates. As with the GTL arrangements, the
23 calling cards have unreasonable, unjust and grossly excessive rates, with a
24 connection fee and a rate per minute far exceeding the standard rate for local calls,
25 or those of the Santa Clara County region.

34. At no time did the County's residents vote to approve the foregoing commissions paid by GTL to the County or the rates charged to the inmates and/or Call Recipients pursuant to the County's agreements with GTL.

VI. CLASS DEFINITIONS

35. The Named Plaintiffs bring this action on their own behalf, and on behalf of all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

36. The Named Plaintiffs for the General Class of Santa Clara County are as follows:

- a. Michael Thatcher and Jeanette Thatcher (parents of Daniel Thatcher who has established and paid for a pre-paid ICS account to allow them to communicate with their son).

37. At times in this Complaint the General Class Named Plaintiffs may be referred to collectively by that title.

38. Additionally, at times in this complaint, the General Class Named Plaintiffs who were or are inmates are referred to collectively as the "Inmate Plaintiffs", and the General Class Named Plaintiffs who were Call Recipients are referred to collectively as the "Named Call Recipient Plaintiffs."

39. Also, the General Class Members who qualify as Call Recipients at times may be referred to collectively as "Call Recipient Class Members," and the General Class Members who qualify as inmates at times may be referred to collectively as "Inmate Class Members."

A. GENERAL CLASS DEFINED

40. The General Rule 23(b)(2) Class (referring to the class of people seeking purely injunctive relief) of Santa Clara County is generally defined as follows:

1 Those individuals or entities that qualify as either a) a past, present or
2 future Santa Clara County Jail inmate for whom a third party ICS account
3 was in the past or present, or in the future will be, established, or b) a Call
4 Recipient, i.e., inmates' family, friends, bailbondsmen, legal counsel, or
5 others, who in the past or present has established, or will in the future
6 establish, a pre-paid ICS account with a telecommunications company
7 (currently GTL) that has contracted with the Santa Clara County to provide
8 third party phone accounts for phone access to County Jail inmates, from
9 which pre-paid accounts the phone charges and administrative or other fees
10 for calls with inmates housed or confined in any Santa Clara County Jail
11 Facility are paid, and out of which collected funds the County of Santa Clara
12 is paid commissions pursuant to its contract with the telecommunications
13 company.

14 41. The General Rule 23(b)(3) Class (referring to the class of people
15 seeking monetary relief in addition to injunctive relief) of Santa Clara County is
16 generally the same, but limited to those who suffered monetary harm and so
17 excludes certain future class members, and is defined as follows:

18 Those individuals or entities, through the earlier of the complete
19 cessation of the challenged conduct or the final resolution of this case, that
20 qualify as either a) a past or present Santa Clara County Jail inmate for
21 whom a third party ICS account was established, or b) a Call Recipient, i.e.,
22 inmates' family, friends, bailbondsmen, legal counsel, or others, who in the
23 past or present has established, or will in the future establish, a pre-paid ICS
24 account with a telecommunications company (currently GTL) that has
25 contracted with the County of Santa Clara to provide third party phone
26 accounts for phone access to County Jail inmates, from which pre-paid
27 accounts the phone charges and administrative or other fees for calls with
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1 inmates housed or confined in any County of Santa Clara Jail Facility are
2 paid, and out of which collected funds the County of Santa Clara is paid
3 commissions pursuant to its contract with the telecommunications company.

4 **VII. COMPLIANCE WITH RULE 23 REQUIREMENTS DEFINITIONS**

5 **A. NUMEROSITY**

6 42. Because California is such a large state, many of its jail systems are
7 large compared to the average jail system in the United States.

8 43. The Santa Clara County Jail has a daily average jail population
9 numbering around 4,000 inmates.

10 44. Average jail turnover rate in US jails is 15 times per year.
11 [http://apps.fcc.gov/ecfs/document/view;NEWECFSSESSION=KnsqVy1h8yKTrl2](http://apps.fcc.gov/ecfs/document/view;NEWECFSSESSION=KnsqVy1h8yKTrl2gyF3g621nyZNJN2nJpXX6DFxznyXyXnh8LJhT!1736751079!-973180750?id=60001115155)
12 [gyF3g621nyZNJN2nJpXX6DFxznyXyXnh8LJhT!1736751079!-](http://apps.fcc.gov/ecfs/document/view;NEWECFSSESSION=KnsqVy1h8yKTrl2gyF3g621nyZNJN2nJpXX6DFxznyXyXnh8LJhT!1736751079!-973180750?id=60001115155)
13 [973180750?id=60001115155.](http://apps.fcc.gov/ecfs/document/view;NEWECFSSESSION=KnsqVy1h8yKTrl2gyF3g621nyZNJN2nJpXX6DFxznyXyXnh8LJhT!1736751079!-973180750?id=60001115155)

14 45. While the turnover rate is smaller in large jails, the jail population
15 turns over several times per year.

16 46. Even assuming that only a small fraction of inmates and their families
17 avail themselves of prepaid ICS accounts, on information and belief, each class for
18 Santa Clara County numbers in the thousands.

19 **B. COMMON ISSUES OF FACT OR LAW**

20 47. The County of Santa Clara has a contract with a telecommunications
21 company, the terms of which provide a minimum annual guaranteed payment
22 against a percentage that goes to the County Jail for the exclusive right to provide
23 pre-paid Call Recipient phone accounts to receive inmate calls.

24 48. The common issues of fact or law applicable to each class include:

- 25 a. Are the charges pursuant to which Defendant County of Santa
26 Clara receives Contract Funds so excessive, arbitrary and/or
27 unreasonable as to deprive or limit Class Members' ability to
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1 reasonably communicate between Inmate Class Members and
2 their families and loved ones who are Call Recipient Class
3 Members in violation of the First Amendment and/or Due
4 Process clauses of the United States Constitution?

5 b. Are the charges pursuant to which Defendant County of Santa
6 Clara receives Contract Funds so excessive, arbitrary and/or
7 unreasonable as to deprive or limit Class Members' of due
8 process by virtue of their disproportionate relationship to the
9 reasonable cost to Defendant County of Santa Clara of ICS
10 usage?

11 c. Are the charges pursuant to which the Defendant County Santa
12 Clara receives Contract Funds so excessive, arbitrary and/or
13 unreasonable as to place unconstitutional conditions on Class
14 Members' exercise of their First and/or Fifth Amendment rights
15 and/or constitute an unlawful taking in violation of Federal due
16 process and unlawful takings clauses?

17 d. Are presumed damages available to Plaintiffs and the Class
18 Members for their non-economic damages for violation of the
19 federal rights asserted in the complaint?

20 49. While there are additional common issues, these issues alone more
21 than establish that there are common issues.

22 **C. TYPICALITY**

23 50. In accordance with F.R. Civ. P. Rule 23(a), the claims of the Named
24 Plaintiffs are typical of each class for which they are named as a class
25 representative. All Named Inmate Plaintiffs were in the custody of Santa Clara
26 County Jail when they were subjected to the unlawful conduct alleged in the
27 Complaint, which unlawful conduct applied and applies to all inmates in Santa
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1 Clara County Jail, who established, or whose family or other associates
2 established, an ICS pre-paid account through Call Recipients. All Named Call
3 Recipient Plaintiffs established a pre-paid ICS account with Santa Clara County
4 Jail in order to be able to communicate with an inmate housed in Santa Clara
5 County Jail, and were accordingly subjected to the unlawful conduct alleged in the
6 Complaint, which unlawful conduct applied and applies to all Call Recipients who
7 established an ICS pre-paid account through Call Recipients.

8 51. Thus, the Named Plaintiffs for the General Class of Santa Clara
9 County have the same interests, and have suffered the same type of damages as the
10 Class Members of that Class. Named Plaintiffs' claims in this Complaint are based
11 upon the same or similar legal theories as the claims of the Class Members. Each
12 class member herein suffered actual damages as a result of the actions of each
13 Defendant applicable to that class. The actual damages suffered by Plaintiffs are
14 similar in type and amount to the actual damages suffered by each class member.

15 52. The economic losses suffered by each class member are commonly
16 determined by the amount paid by that class member for the ICS charges paid by
17 or on behalf of that class member, plus interest to be determined.

18 **D. ADEQUACY OF REPRESENTATION**

19 53. In accordance with F.R. Civ. P. Rule 23(a), the Named Plaintiffs will
20 fairly and adequately protect the interests of the class. The interests of the Named
21 Plaintiffs are consistent with and not antagonistic to the interests of each class.

22 54. Similarly, class counsel are experienced class action litigators who
23 will fairly and adequately protect the interests of each class.

24 **E. PREDOMINANCE AND SUPERIORITY**

25 55. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(A), prosecutions of
26 separate actions by individual members of the class would create a risk that
27 inconsistent or varying adjudications with respect to individual members of the
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1 class would establish incompatible standards of conduct for the parties opposing
2 the class.

3 56. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(B), prosecutions of
4 separate actions by individual members of the class would create a risk of
5 adjudications with respect to individual members of the class that would, as a
6 practical matter, substantially impair or impede the interests of the other members
7 of the class to protect their interests.

8 57. In accordance with Fed.R.Civ.P. Rule 23(b)(2), Plaintiffs are
9 informed and believe, and thereon allege that Defendants have acted on grounds
10 generally applicable to the class.

11 58. In accordance with Fed.R.Civ.P. Rule 23(b)(3), the questions of law
12 or fact common to the members of the class predominate over any questions
13 affecting only individual members, and this class action is superior to other
14 available methods for the fair and efficient adjudication of the controversy between
15 the parties. The interests of Class Members in individually controlling the
16 prosecution of a separate action is low in that most Class Members would be
17 unable to individually prosecute any action at all. The amounts at stake for
18 individuals are such that separate suits would be impracticable in that most
19 members of the class will not be able to find counsel to represent them on an
20 individual basis. It is desirable to concentrate all litigation in one forum because all
21 of the claims arise out of the same basic pattern of conduct, the legality of which is
22 subject to class wide determination. It will promote judicial efficiency to resolve
23 the common questions of law and fact in one forum rather than in multiple courts.
24 Because the unlawful conduct alleged herein is systemic, it is particularly well
25 suited to resolution on a class basis, as the critical questions in the case may be
26 answered on a class wide basis. Indeed, in this case, there are no individualized
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1 issues at all regarding liability. Either the charges are lawful under the legal
2 theories implicated by this Complaint or they are not.

3 59. The claims raised herein are susceptible to common proof. Defendant
4 County of Santa Clara has a contract under which it receives a minimum fee
5 against a percentage of certain proceeds in exchange for its grant of exclusive ICS
6 rights. The phone charges and related fees that Class Members pay are uniform
7 across Class Members, and are discoverable from the contracted
8 telecommunications company computerized records.

9 60. Plaintiffs know of no difficulty that will be encountered in the
10 management of this litigation that would preclude its maintenance as a class action.
11 The class action is superior to any other available means to resolve the issues
12 raised on behalf of the classes. The class action will be manageable because
13 computerized records systems exist from which to ascertain the members of the
14 class and to ascertain some of the proof relevant to Plaintiffs' claims. Liability can
15 be determined on a class-wide basis based on class wide evidence because the
16 Plaintiffs complain of systemic and widespread policies and practices that are
17 uniform for Defendant County of Santa Clara, based on their particular contract
18 with the relevant telecommunications company. Named Plaintiffs and the Class
19 Members are entitled to economic damages under federal law, and to such other
20 damages as may be determined by the Court or the trier of facts; and, in any event,
21 individualization or variability in damages is not a bar to a liability certification
22 based on common liability issues.

23 61. Plaintiffs do not know the identities of the Class Members. The
24 identities of the Class Members are ascertainable from a combination of Santa
25 Clara County Jail and the County's contracted telecommunications company
26 records. Plaintiffs are informed and believe, and thereon allege, that the foregoing
27 computer records reflect the identities, including addresses and telephone numbers,
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1 of the persons who qualify as Class Members, and the charges incurred, and that it
2 is possible to ascertain from those records who qualifies as a class member of each
3 class.

4 62. In accordance with Fed.R.Civ.P. Rule 23(b)(3), Class Members must
5 be furnished with the best notice practicable under the circumstances, including
6 individual notice to all members who can be identified through reasonable effort.
7 Plaintiffs are informed and believe that the telecommunications company computer
8 records and County Jail records for Defendant County of Santa Clara contain a
9 current or last known address for Class Members, as well as the billing information
10 pertinent to each class member.

11 **VIII. APPROPRIATENESS OF EQUITABLE RELIEF**

12 63. Inmate Plaintiffs and Class Members currently incarcerated, and Call
13 Recipient Plaintiffs and Class Members with current and operating ICS accounts,
14 are and will continue to be, subject to the unlawful ICS phone charges addressed in
15 this Complaint.

16 64. Defendant County of Santa Clara's continuing violations of law under
17 applicable United States constitutional and statutory provisions causes Plaintiffs
18 and Class Members continuing, sweeping and irreparable harm.

19 65. Because no adequate remedy at law exists for the injuries alleged
20 herein, Plaintiffs seek injunctive relief under both federal and state law, including
21 restitution in amounts to be determined at trial based on the unlawful payments
22 plus interest.

23 **IX. DAMAGES**

24 66. As a result of Santa Clara County Defendants' unlawful conduct,
25 Plaintiffs and Class Members have suffered, and will continue to suffer,
26 compensable damages in amounts to be determined at trial, including economic,
27 physical and emotional distress damages, in amounts according to proof at trial.
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1 The economic damages and/or refund/restitution/disgorgement are susceptible to
2 class wide proof based on the computerized records of the applicable
3 telecommunications company, the Santa Clara County Jail, and the applicable
4 documents and records memorializing and documenting the ICS charges
5 complained of herein.

6 67. Plaintiffs do not seek retroactive reduction of the rates charged by
7 phone companies. Rather, the monetary relief they seek is limited to
8 reimbursement to the class of the commission the County has received to the extent
9 they do not reflect the reasonable facility cost of supporting ICS, plus interest. Nor
10 do Plaintiffs seek to require multiple phone companies operate in the Jail. Nor do
11 Plaintiffs seek to prevent the County for entering into future exclusive ICS
12 contracts with a particular phone provided. The future relief Plaintiffs seek is to
13 restrict the amount of commissions for which the County contracts in the future to
14 an amount that reasonably reflects the cost to the County Jail to support the
15 provision of ICS access.

16 68. Plaintiffs and the class members are entitled to presumed damages
17 under federal law.

18 69. Santa Clara County Defendants acted maliciously, fraudulently or
19 oppressively, and in reckless disregard of the Plaintiffs' and Class Members'
20 rights, thereby entitling Plaintiffs and the Class to an award of punitive damages
21 from all Defendant individuals except the County Defendants or any governmental
22 entity.

23 **X. CLAIMS**

24 **A. VIOLATIONS OF 42 U.S.C. §1983 [BY ALL PLAINTIFFS AGAINST**
25 **SANTA CLARA COUNTY DEFENDANTS]**

26 70. Plaintiffs incorporate all previous and subsequent paragraphs of this
27 Complaint into this claim.

1 71. Defendant County of Santa Clara is a local government entity
2 susceptible to suit under 42 U.S.C. §1983. All of the conduct alleged herein was
3 done under color of state law, pursuant to a governmental policy, custom or
4 practice. Each of the contracts alleged herein was approved by, and entered into
5 under the authority of, the Santa Clara County Board of Supervisors.

6 72. Plaintiffs have a First Amendment right of access to telephones
7 because no other means of communication is an adequate substitute for the
8 telephone. Specifically, neither in person visits, which are unrealistic for many
9 people, nor mail, which is difficult to accomplish and requires a level of literacy
10 not possessed by a significant portion of class members, are a substitute for
11 telephone communication. This is a fundamental constitutional right.

12 73. The use of the telephone is an expressive activity protected by the
13 First Amendment. Such expressive activity is a fundamental constitutional right.

14 74. Even if the County Jail has discretion to deny telephone access to
15 inmates, it has chosen to provide such access. Accordingly, since it has chosen to
16 provide such a benefit to inmates and their families, it may not condition class
17 members' exercise of, and access to, that discretionary benefit on coercive or
18 unreasonable conditions that require payment of money not reasonably related to
19 that benefit or its costs, which is what it has done here.

20 75. The conduct alleged herein violates and unduly burdens the Class
21 Members' rights of association and meaningful personal communication with
22 family, friends, associates and other Call Recipients in violation of the First
23 Amendment to the United States Constitution.

24 76. The conduct alleged herein violates the Fifth Amendment to the
25 United States Constitution. Both Call Recipients and Inmate Plaintiffs' and Class
26 Members' ability to speak to loved ones, friends, and counsel is unconstitutionally
27 conditioned on ICS payments that unreasonably burden the exercise of Fifth
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1 Amendment rights to just compensation, unreasonably forces Plaintiffs and the
2 classes alone to bear public costs that should be borne by the public as a whole,
3 and additionally bear no reasonable nexus or rough proportionality to the required
4 payments and the cost to, or burden or effect on, the County of Santa Clara by
5 allowing the provision of such calls. The FCC has determined that, for jails with an
6 average daily population above 2,500, the facility cost of supporting ICS is
7 between \$0.01-\$0.02 per minute, based on information provided by the National
8 Sheriff's Association. (See 8/9/16 FCC Order on Reconsideration, 16-102, pg. 15
9 ¶ 26. Plaintiffs and Class Members' rights to due process of law were unlawfully
10 abridged, as explained above, and their rights to equal protection of the laws were
11 denied in that the conduct complained of herein was arbitrary and capricious.

12 77. ICS charges are especially vulnerable to the type of coercion that the
13 unconstitutional conditions doctrine prohibits because the government often has
14 broad discretion to control inmates' access to the outside world, and therefore
15 government entities can pressure and coerce Class Members into paying hugely
16 disproportionate and unreasonable phone charges in order to be able to
17 communicate with loved ones and others herein referred to as Call Recipients.

18 78. Even if the Santa Clara County Defendants could deny inmate phone
19 calls altogether, that is not what has occurred. Once ICS phone calls are allowed, it
20 cannot condition that benefit by infringing and burdening Fifth Amendment rights
21 by forcing Plaintiffs and Class Members to pay funds that are unreasonable and
22 substantially disproportionate to the cost to, or burden or effect on, Santa Clara
23 County Defendants for allowing ICS calls.

24 79. Accordingly, Santa Clara County Defendants' actions violate
25 Plaintiffs' and Class Members' Fifth Amendment rights, and/or place
26 unconstitutional conditions on their exercise, thereby violating the Fifth
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1 Amendment's prohibition on unconstitutional conditions and taking private
2 property without just compensation.

3 80. As a direct and proximate result of Santa Clara County Defendants'
4 violations, Plaintiffs and the Class Members have been damaged in amounts to be
5 determined at trial.

6 81. As a direct and proximate result of Santa Clara County Defendants'
7 violations, Plaintiffs and the Class Members are entitled to injunctive relief,
8 including restitution, in amounts to be determined at trial based on the unlawful
9 payments plus interest.

10 **B. VIOLATION OF SHERMAN ANTITRUST ACT [BY ALL PLAINTIFFS**
11 **AGAINST SANTA CLARA COUNTY DEFENDANTS] – INJUNCTIVE**
12 **RELIEF ONLY**

13 82. Plaintiffs incorporate all previous and subsequent paragraphs of this
14 Complaint into this claim.

15 83. For purposes of this cause of action, the relevant market is Inmate
16 Phone Services within Santa Clara County jails. Because inmates and call
17 recipients, including Plaintiffs, are a captive market in that they have no access to
18 phone services other than those offered by the County Defendants, inmate phone
19 services constitute a distinct market from phone services provided outside jails and
20 prisons. Indeed, there are companies, such as GTL and Securus, which compete
21 against each other solely in the inmate phone service market.

22 84. Rather than using their market power to obtain the most competitive
23 phone prices for its consumers (inmates and call recipients), including Plaintiffs,
24 through a typical bidding process, or by allowing more than one company to
25 provide inmate phone services, the County Defendants did the opposite. They used
26 their market control over the jails to enrich themselves at the expense of the phone
27 services end consumers (inmates and call recipients), entering into an exclusive
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1 agreement with the phone company willing to pay the highest kickback to the
2 County.

3 85. By providing GTL exclusive access to a captive market, the County
4 Defendants allow GTL to prey on Plaintiffs and the class they seek to represent by
5 charging exorbitant rates, without any competitive pressures. In addition, by
6 awarding the contract to GTL based on GTL agreeing to pay the County at least
7 \$1.7 million dollars per year, County Defendants functionally require GTL to take
8 advantage of its the exclusive market power granted it by the County Defendants to
9 charge rates far in excess of the rates that would prevail in a competitive market.

10 86. On the other hand, if the County Defendants permitted more than one
11 company to provide phone services within its jails and/or selected an exclusive
12 provider based on which company offered the most competitive pricing for end
13 consumers rather than the highest kickback to the County, consumers like
14 Plaintiffs would receive the benefits of such market competition, including lower
15 prices and increased quality and selection.

16 87. County Defendants' conduct not only thwarted competition for inmate
17 phone services within County Defendants' jails, but totally eliminated competition
18 except competition as to who would provide the County Defendants the greatest
19 benefit in exchange for grant of the exclusive contract.

20 88. The direct, proximate, and foreseeable result and effect of the
21 agreement between County Defendants and GTL was that competition for inmate
22 phone services within County Defendants' jails provided no market choice to the
23 ultimate consumer of inmate phone services. Consumers of inmate phone services,
24 like Plaintiffs, must pay supra-competitive prices for their phone calls.

25 89. The exclusive provider agreements described herein between the
26 County of Santa Clara and GTL (hereinafter referred to as the "Agreement")
27 constitutes an unreasonable, vertical agreement in restraint of trade in violation of
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1 Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. The anticompetitive effects
2 of the Agreement are not overridden or justified by any procompetitive benefits
3 stemming from the Agreement. The charges paid by consumers to use inmate
4 telephone services are significantly above the actual cost of providing the
5 telephone services. Further, there are no safety concerns that require such
6 monopolistic arrangements, and certainly no requirements that the County receive
7 such substantial kickbacks, or any kickback at all. To the extent that any
8 procompetitive benefits result from the Agreement, they could be achieved by less
9 restrictive means.

10 90. As a direct, proximate, and foreseeable result of the foregoing
11 agreement, Plaintiffs have been injured by being charged supra-competitive prices
12 for use of inmate phone services within the County's jails.

13 91. County Defendant possesses monopoly power over the relevant
14 market (previously defined). It has the power to both control prices by requiring
15 large commissions and the power to exclude competition by allowing only one
16 inmate phone provider access to the market. It controls 100% of the relevant
17 market. It has used its monopoly power to foreclose competition and gain a
18 competitive advantage in violation of Section 2 of the Sherman Antitrust Act, 15
19 U.S.C. § 2.

20 92. County Defendant and GTL have entered into the previously
21 described contract and agreement with the full knowledge and intent to restrain
22 trade, including trade among the various states; have injured competition, and
23 caused an antitrust injury resulting from that anti-competitive conduct to the end
24 consumers (inmates and call recipients) who avail themselves of inmate phone
25 services.

1 93. The commissions constitute a taking of property (money), and, by
2 physically taking the money, also constitute an immediate harm. There are no state
3 administrative avenues of relief to exhaust.

4 94. GTL is not named as a Defendants herein but is an unnamed co-
5 conspirator.

6 95. GTL is a nationwide company that engages in commercial activities
7 throughout the United States. GTL describes itself on its website as “the leading
8 provider of integrated corrections technology for facilities across North America.”
9 GTL lists on its website facility specific information for correctional facilities in
10 California, Illinois, Arizona, Pennsylvania and Indiana. Career opportunities
11 applications for anywhere in the United States are handled through its Human
12 Resources offices in Mobile, Alabama. GTL provides a single contact number to
13 its correctional facilities clients throughout the United States, available on its
14 website. GTL integrates its technology on a national basis and consumer inquiries,
15 wherever based, are handled through a single, integrated Service Center. On
16 information and belief, GTL orders equipment used for its service from the stream
17 of interstate commerce, and many of the members of the Call Recipient class are
18 outside the state of California. Similarly, Defendant County and its County jails
19 regularly do business with companies throughout the United States, and regularly
20 orders products, including the products used for the foregoing contracts, from the
21 stream of interstate commerce. On information and belief, GTL orders equipment
22 used for its service from the stream of interstate commerce, and many of the
23 members of the Call Recipient class are outside the state of California. Similarly,
24 Defendant County and its County jails regularly do business with companies
25 throughout the United States, and regularly orders products, including the products
26 used for the foregoing contracts, from the stream of interstate commerce. Thus,
27 the conduct challenged herein has a substantial effect on interstate commerce.

1 96. Although Defendant County of Santa Clara is a political subdivision
2 of the State of California, the conduct challenged herein has not been taken
3 pursuant to a clearly articulated and affirmatively expressed state policy, and the
4 State of California did not affirmatively contemplate that Counties and County jails
5 would displace competition and has not delegated to Counties or County jails the
6 authority to act anti-competitively in setting fees or commissions. Enactment of
7 the limitations on local or state government's authority to impose assessments, fees
8 or taxes by virtue of Articles 13 C and D to the California Constitution makes clear
9 that local authorities are not authorized to establish fees of any kind that are not
10 reasonably related to their costs, which necessarily by its terms include
11 anticompetitive fees and charges.

12 97. The Named Plaintiffs and the members of each class who do
13 currently, or may in the future, use or avail themselves of the inmate telephone
14 service provided by GTL will suffer irreparable harm, and there is no adequate
15 remedy at law, unless the Court grants injunctive relief as is further described in
16 the Prayer for Relief section of this complaint.

17 **XI. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members
19 they seek to represent, request monetary and injunctive relief against each
20 defendant as follows:

- 21 1. General and special damages according to proof;
- 22 2. A refund/disgorgement/restitution of the monies paid by Class
23 Members that, in turn, were used to pay the contracted commissions to County
24 Defendants the amounts contracted for in connection with the inmate calling
25 agreements of each with telecommunications companies.
- 26 3. Economic, physical and emotional distress damages (in addition to the
27 damages sought in the preceding paragraph, or to the extent not covered or
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1 awarded pursuant to that paragraph), and physical and emotional distress and other
2 damages according to proof.

3 4. Temporary, preliminary and permanent injunctive relief prohibiting
4 Defendant County of Santa Clara from continuing to engage in the unlawful
5 practices complained of herein as follows:

- 6 a. Prohibiting the Defendants from renewing, or entering into
7 new, ICS contracts under which it receives commissions or fees
8 except exceeds the reasonable cost of providing the service of
9 allowing telephone access cost after determination of such
10 amounts by the court;
- 11 b. Prohibiting the Defendants, while the current challenged
12 contract remains in effect, from using the commissions it
13 receives under the contract for any purpose other than
14 placement in a court supervised fund for any purpose other than
15 ultimately restoring such funds back to the class members who
16 paid charges from which said commissions were taken to the
17 extent of said commissions.

18 5. Temporary, preliminary and permanent injunctive relief requiring
19 Defendant County of Santa Clara to provide refunds/disgorgement/restitution of
20 the monies paid or to be paid by Class Members as a form of equitable relief.

21 6. Class wide presumed damages for non-economic damages for class
22 members on the federal claims. ,

23 7. Attorneys' fees and costs under 42 U.S.C. §1988, 15 U.S.C. § 26,
24 and whatever other statute or law may be applicable.

25 8. Grant any other relief that this Court may deem fit and proper.

1 DATED: August 18, 2016

Respectfully Submitted,

2
3 KAYE, MCLANE, BEDNARSKI & LITT, LLP
4 RAPKIN & ASSOCIATES, LLP

5 By: /s/ Barrett S. Litt

6 Barrett S. Litt

7 Attorneys for Plaintiffs

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9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs, on behalf of themselves individually and on behalf of the Class,
11 demand a jury trial to the extent available under applicable law.

12 DATED: August 18, 2016

Respectfully Submitted,

14 KAYE, MCLANE, BEDNARSKI & LITT LLP
15 RAPKIN & ASSOCIATES, LLP

16 By: /s/ Barrett S. Litt

17 Barrett S. Litt

18 Attorneys for Plaintiffs
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